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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,236	09/17/2003	Sandra M. Maclean	11842/US/2	5239

7590 05/04/2006
S. Wade Johnson
DORSEY & WHITNEY LLP
Intellectual Property Department
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,236

Applicant(s)

MACLEAN ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
4a) Of the above claim(s) 10-24 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9 and 26-30 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 23 February 2006 have been fully considered but they are not persuasive.

1. In response to Applicant's arguments that 'Schumacher does not disclose, teach, or suggest a miscarriage kit comprising at least one under pad/bed liner' (see Remarks pages 8-9), since the underpad/bed-liner 14 is described in structure only as having an absorbent component and capability (see instant specification page 9, lines 6-15), the absorbent containing pouch 60 or Schumacher is equivalent to the under pad/bed liner.
2. In response to Applicant's arguments that 'Schumacher does not disclose, teach, or suggest a miscarriage kit comprising a specimen pan, wherein the specimen pan is configured to fit inside the rim of a toilet and further includes an upper rim configured to allow the upper rim to rest atop the toilet rim' (see Remarks page 9), the specimen pan 80 inherently fits inside the rim of a toilet and simultaneously rests atop the toilet rim since it is slightly smaller than the opening in the toilet. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Schumacher (US 4,917,238; herein 'Schumacher'). Regarding claims 1 and 3 Schumacher discloses a waste cleanup/miscarriage kit 10 for cleaning up body waste such as vomit, blood, feces and the like (column 2, lines 6-7 and figure 1) comprising an absorbent pouch/underpad-bed liner 60 (column 4, lines 19-20); at least one disposable absorbent towels 50 and sanitary napkins 51, 52 (column 2, lines 45-47); disposable plastic gloves 57,58 (column 2, lines 52-53); scoop/specimen pan 80; and container 64 capable of holding pregnancy remains or any other substance (column 3, lines 1-3 and line 33).

Regarding claim 2 Schumacher discloses the specimen pan 80 configured and shaped to fit inside a toilet rim and rest atop the toilet rim since it is smaller than the opening in a toilet bowl (figure 3).

Regarding claims 4 and 25 Schumacher discloses container 64 is spill-proof and sanitary since it has cap 68 that confines the liquids (column 3, line 20).

Regarding claims 5-9 and 26-30 Schumacher discloses label/list 63 (col. 2, ll. 64-68); two plastic bags 53,54 (column 4, lines 47-48); germicidal hand wipe 7 and scraper 90 (col. 3, lines 25 and 33-34).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Misara (US 6,012,586) is cited for showing a medical procedure kit 10 comprising: prep pad and sponge/underpad (column 6, lines 44-47); wet and dry gauze/at least one sanitary napkin (column 5, lines 45-46); gown/at least one towel (column 5, lines 33-34); at least one specimen pan 82 configured to fit inside and rest atop a toilet rim (figure 5), and drain/container 68 (column 7, lines 10-15).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137.

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The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER





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10-664-236

EXAMINER

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Commissioner for Patents